UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

OGS TECHNOLOGIES, INC.
The Respondent

and **Cases 34-CA-9336**
34-CA-9458

UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL WORKERS OF AMERICA, LOCAL 376, AFL-CIO
The Charging Party

Jennifer F. Dease, Esq. and Terri A. Craig, Esq.,
of Hartford, Connecticut for the General Counsel.

Joseph B. Summa, Esq. and *William A. Ryan, Esq., (Summa & Ryan)*, of Waterbury, Connecticut
for the Respondent.

Thomas Meiklejohn, Esq. of (*Livingston, Adler, Pulda, Meiklejohn & Kelly)*,
of Hartford, Connecticut for the Charging Party.

DECISION

Statement of the Case

CLIFFORD H. ANDERSON, Administrative Law Judge: The above-captioned cases came before me for decision based on the following:

On July 12, 2000, the United Automobile, Aerospace & Agricultural Workers of America Local 376, AFL-CIO (the Charging Party or the Union) filed a charge with Region 34 of the National Labor Relations Board docketed as case 34-CA-9336 against OGS Technologies, Inc. (the Respondent[1]). On October 16, 2000, the Charging Party filed a second charge against the Respondent docketed as case 34-CA-9458, which charge it amended on November 3, 2000.

On August 31, 2001, the Regional Director for Region 34 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing scheduling a hearing on the consolidated cases. Following the submission of a timely answer, the case came on to hearing before Administrative Law Judge Howard Edelman on December 11, 2001, March 21, 2002, and September 5, 2002.

[1] The Respondent is also referred to as OGS in correspondence between the parties quoted in part below.

On November 29, 2002, Judge Edelman issued his decision in the matter. Exceptions to the Judge's decision placed the matter before the Board. The Board, on May 31, 2006, in a decision reported at 347 NLRB No. 29 (May 31, 2006) (the Remand Order), set aside Judge Edelman's decision and remanded the matter to the Chief Administrative Law Judge for reassignment to a different administrative law judge. The Board in its Remand Order issued the following instruction to the new judge receiving the remand:

> The judge shall review the record and issue a reasoned decision.[3] We will not order a hearing de novo because our review of the record satisfies us that Judge Edelman conducted the hearing itself properly.

ORDER

> IT IS ORDERED that the administrative law judge's decision of November 29, 2002, is set aside.
>
> IT IS FURTHER ORDERED that this case is remanded to the chief administrative law judge for reassignment to a different administrative law judge who shall review the record of this matter and prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on the evidence received. Following service of such decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

[3] The new judge may rely on Judge Edelman's demeanor-based credibility determinations unless they are inconsistent with the weight of the evidence. If inconsistent with the weight of the evidence, the new judge may seek to resolve such conflicts by considering "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole." *RC Aluminum Industries, Inc.,* 343 NLRB No. 103, slip op. at 1 fn. 2 (2004), quoting *Daikichi Sushi*, 335 NLRB 622, 623 (2001)(internal quotation marks and citations omitted). Alternatively, the new judge may, in his/her discretion, reconvene the hearing and recall witnesses for further testimony. In doing so, the new judge will have the authority to make his/her own demeanor-based credibility findings.

On June 8, 2006, Chief Administrative Law Judge Robert Giannasi issued an Order Reassigning Case transferring the matter to the undersigned.

Findings of Fact

Upon the entire record herein, including helpful briefs from the Respondent and the General Counsel[2], I make the following findings of fact.[3]

[2] The record on remand did not contain the post-hearing briefs of the parties to the original trial judge. On June 16, 2006, in a conference call with the parties, I set July 21, 2006 as the due date for submission of briefs on remand and provided the parties the option to submit their original brief to the original judge and/or a new brief. The General Counsel filed a new brief on remand and the Respondent filed a substantial updated position letter. Each also submitted its original briefs. The record also contains the parties' original exceptions and briefs to the Board.

[3] As a result of the pleadings, the joint exhibits and stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings

I. Jurisdiction

The complaint alleges, the answer admits, and I find, the Respondent is a Connecticut corporation with an office and place of business in Waterbury, Connecticut where since January 2001, it has been engaged in the manufacture and non-retail sale of brass buttons.

During the 12-month period ending July 31, 2001, the Respondent purchased and received at its Waterbury operations goods valued in excess of $50,000 directly from points outside the State of Connecticut.

Based on the above, there is no dispute and I find the Respondent is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

The record establishes, there is no dispute, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. Allegations

The complaint, as amended, alleges and the answer, as amended, denies that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by:

- In January 2000 and at all times thereafter failing and refusing to recognize or bargain with the Union as the representative of its die maker employees;

- On or about October 6, 2000, without notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to the following conduct and the effects of the conduct:
    - o laying off die maker Michael Petroraio, and
    - o sub-contracting all die maker work,
    - o changing the job duties of its die makers or eliminating its die maker positions.

The Respondent contends that it was at no time obligated to bargain with the Union respecting its die maker employees or die making operations and that the Union at relevant times failed and refused to bargain in good faith with the Respondent.

B. Background[4]

For many years the Waterbury Companies Inc., d/b/a Waterbury Button Company,[5] operated a facility engaged in the manufacture and non-retail sale and distribution of brass

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herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

[4] The findings in this section are based on the written stipulations of the parties received into evidence at the hearing before Judge Edelman as Joint Exhibit 1(a).

[5] In acquiring the assets and operations of Waterbury Button Company, the Respondent also used that business name. To avoid confusion herein, the name Waterbury Button

buttons. The Union had for some time represented a unit of some 45 of that entity's production and maintenance employees.[6] Waterbury Companies, Inc. and the Charging Party had a collective-bargaining agreement in place covering the unit employees, effective by its terms from April 1997 through March 12, 2000. The unit description in the contract stated:

> All production and maintenance employees at its Waterbury, Connecticut division, including receiving, weighing and stock clerks, but excluding office and professional employees, guards, drafters, drafting, tool room and billing clerks, nurse, laboratory employees, expediters, timekeepers, supervisors, factory supervisors, and all other supervisors as defined in Section 2(11) of the National Labor Relations Act, as amended.

In the fall of 1999, Mr. Mike Salamone became interested in acquiring Waterbury Button Company and formed the Respondent on or about December 20, 1999, for the purpose of purchasing the assets of Waterbury Button Company. Mr. Salamone was a 60% shareholder and President of the Respondent. Mr. Salvatore Geraci, until the time of the acquisition the Plant Manager of the Waterbury Button Company, was a 20% shareholder of the Respondent and the Executive Vice-President of Operations. Mr. Robert J. Oppici, until the time of the acquisition the Sales Manager of the Waterbury Button Company, was a 20% shareholder of the Respondent and the Executive Vice President of Sales.

During this preparatory period the Respondent arranged financing, conducted negotiations to purchase the Waterbury Button Company assets, prepared financial models, employee policies, employee handbooks, job descriptions, pay rate ranges, affirmative action plans, and benefit programs. During the period January 16 through January 22, 2000, the Respondent ran advertisements for potential employees.

On January 21, 2000, the Respondent purchased the assets of Waterbury Button Company from Waterbury Companies, Inc., including all accounts receivable, inventory, tooling, fixtures, machinery, equipment, technical data rights, patents, trademarks, trade names, literature, plates, negatives, films, price lists, customer lists, customer history files, vendor lists, open customer purchase orders, open contracts, open vendor purchase orders, display booths, office equipment, computers, vehicles, shop supplies, products, product lines, and distributor agreements.

On January 22 and 23, 2000, Mr. Salamone interviewed a number of applicants for positions at the acquired operation. The applicants included a large number of former Waterbury Button employees. Each former Waterbury Button employee was also independently evaluated by Geraci and Oppici. During the applicant interviews, Salamone reviewed with each applicant the nature of cell manufacturing, the appropriate job description, expected duties, and generally compensation and benefits. Former Waterbury Button employees, Michael Petroraio and Richard Carey were among those interviewed.

At the conclusion of the day on January 23, 2000, Salamone, based on the applications, interviews and evaluations of the applicants, took the decision to offer certain applicants employment with the Respondent with the commencement of operations the following day. On January 24, 2000 the Respondent began operations with 20 production and maintenance

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Company is used exclusively to refer to the former entity and the name OGS Technologies, or the Respondent, is used in reference to the new entity.

[6] The recognition clause of the final contract referred to an earlier Board certification of representative without further specific identification of the date of certification.

employees, 19 of whom were former Waterbury Button Company employees from the represented production and maintenance unit. At all relevant times thereafter, the Respondent has continued to operate with substantially the same number of production and maintenance employees.

The Respondent hired former Waterbury Button Company Production Control Manager Nick Longo as its Inventory Control Manager and Waterbury Button Company Engineering Manager Tom Wirges as its Engineering Manager. On January 31, 2000, the Respondent hired former Waterbury Button Company master die cutters Michael Petroraio and Richard Carey as "Die Engineers".

The Respondent utilizes a "cell manufacturing concept" in its production process compared to a more traditional process as used by Waterbury Button Company. Thus, where Waterbury Button Company maintained approximately 49 production and maintenance job classifications, the Respondent maintains nine production and maintenance job classifications. Waterbury Button Company operated with approximately 45 employees employed in the production and maintenance bargaining unit, the Respondent operates with approximately 20 production and maintenance employees. Waterbury Button Company maintained approximately 16 production and maintenance departments, the Respondent combined those departments into four work "cells", three of which are related to manufacturing.

B. Events

By letter dated January 26, 2000, Art Muzzicato, International Representative of the United Auto Workers writing on behalf of the Charging Party, wrote Joseph Summa, counsel for the Respondent. The letter asserted that the Charging Party had learned that Mr. Summa's client had purchased the Waterbury Companies operation, sought an immediate meeting to discuss the terms and conditions of employment of Waterbury Companies employees and sought certain information and documentation regarding the takeover.

Following an exchange of phone calls, a meeting was held on February 10, 2000, between Muzzicato, Charging Party President Russ See and Respondent's two counsel, Summa and William Ryan, at the UAW's regional center in Farmington. Mr. Summa testified that the meeting involved heated accusations by Ryan that the Union had a contract with Waterbury and that Summa and his client were bound to it and must rehire the laid off employees. Ryan angrily stated in Summa's recollection: "[T]ake this contract back." Summa and Ryan responded that their clients were not the former entity, had simply purchased Waterbury's assets and that the contract did not bind their new enterprise. After the exchange of positions the meeting ended.

Mr. Muzzicato testified that Charging Party President See told the Respondent agents that the Union felt that the new and the old companies were in "cahoots" because Sal Geraci, the former plant manager, was also a principal and high official in the Respondent.

Mr. Summa wrote a letter dated, February 18, 2000, to Muzzicato which clarified the Respondent's name, address and the nature of the Respondent's acquisition. It continued:

> In your letter you ask that a meeting be scheduled to discuss the terms and condition of the Waterbury Company employees. As stated above, OGS now owns the assets of the old Waterbury Button Company. Further, while OGS has hired some past Waterbury Company employees, to date, it has not yet hired its regular compliment of employees. Thus, there is a question as to whether OGS has a bargaining obligation with the UAW.

> However, it is my understanding, that when our full compliment of employees is hired the numbers will be such that it would trigger a bargaining obligation. Therefore I am willing to meet with you on behalf of OGS to discuss your position with regard to OGS's employees.

Mr. Muzzicato testified to essentially the same events.

On March 2, 2000, Counsel Summa and Ryan met with Muzzicato and Charging Party Business Agent Carmen Burnham at the UAW Farmington, Connecticut Regional headquarters. There was no agreement on whether or not Mr. See attended the meeting. The Respondent agreed to recognize the Union as the representative of the Respondent's production and maintenance employees and offered to sit down and bargain a contract. Summa testified that President See took umbrage, asserting that a contract existed and that the Respondent should acknowledge it and hire back all the laid off employees. Summa reiterated his position that "it's not our obligation and we're willing to bargain." Summa recalled Muzzicato said that the Charging Party believed the Respondent was an alter ego of Waterbury Button and was bound to the contract and that the Union was having trouble obtaining information from Waterbury Button about the change. Summa testified:

> [The Union] said that they could not get any information from Waterbury Companies and that they had no way to evaluate whether or not we were an alter ego. I offered to give them any information that we had available. I had already given them a list of employees and the policy book and that they asked specifically if they could get a copy of the sales agreement. I said I would check with my principles. Art said that would send out a letter what they were looking for and I said send it to me and I'll deal with it.

Later that day, March 2, 2000, See and Muzzicato wrote Summa a letter the first portion of which stated:

> Thank you for agreeing to recognize Local 376 as bargaining agent for the Waterbury Button employees. The Union is now attempting to determine whether OGS is obligated to honor our Waterbury Button contract. I understand it to be your position that you do not have to honor the contract.
>
> To determine whether you are obligated to honor the contract, the Union is requesting information that it needs to determine whether OGS is an alter ego of the Waterbury Companies.

The letter continued requesting various information and included an "Alter Ego Questionnaire" to be completed by the Respondent.

On March 17, 2000, the Union filed a charge against the Respondent in Case 34-CA-9215, inter alia, alleging an alter ego relationship between the Respondent and Waterbury Button Company, challenging the Respondent's omission to hire certain of the employees of Waterbury Button and the Respondent's failing to honor the terms of the Waterbury Button collective-bargaining agreement.

On March 21, 2000, Counsel Summa met with Muzzicato and Burnham at Summa's office. Summa testified Ryan was also present. The Respondent gave the Union requested materials including the Respondent's job descriptions and arranged to meet again the following day to give the Union time to absorb and ask questions about the material provided and to provide additional information.

On March 22, 2000, the parties met again. Mr. Muzzicato recalled some of the events testified to by Summa as occurring on the previous day. He recalled however than on the afternoon of March 22, 2000, he received the Respondent's job descriptions. He testified further:

> After those job descriptions were presented to me, I asked Joe [Summa] about the recognition clause if they were willing to sign the recognition clause and he explained to me the first time I heard it was that day that there's two classifications that he wants out of the unit…. The two classifications I thought he said at the time were the die and waste engineers the die and waste treatment engineers that he wanted out of the unit. He said they are management jobs and they are more into the management area and he said -- I said no I didn't want them out…. And Joe told me he said well you can take them out and try to negotiate them back in and conversely I thought that would become a mandatory subject and I took the other position to leave them in and you try to bargain them out and he said no and we got off on that position. I asked him -- after that I asked him for the job descriptions of those -- of the jobs that he wanted to take out of the unit because I wanted to verify if they were really management jobs or bargaining unit jobs.
>
> Q So you asked him for a copy of those?
> A Yes.
> Q And did you ever receive a copy of those?
> A The only time that I saw them was at the trial here.
> Q So back in December of 2001?
> A That's when we were at trial.
> Q Okay. Why did you ask for a copy of those job descriptions?
> A Basically I wanted to see if they really were management jobs or bargaining unit jobs.
> Q Now was anything else said at that meeting?
> A Yes. We started talking about the operations and Joe didn't understand too much about the operations. Nobody from management from the operation unit was there. So I asked him if he would bring Salamone to the next meeting?
> Q Salamone?
> A Salamone who was the principle owner at the next meeting to see how the operations is going to do. He did agree and gave me a date.

Mr. Summa testified that after the specific language of a confidentiality agreement was negotiated, signed and the Respondent's sales agreement provided to the Charging Party, the parties started discussing the Respondent's provided job descriptions. The Charging Party's agents asked about the duties of the individual positions and associated wage rates. The conversation turned to the job description: master die cutter. Mr. See noted that the former position of "die engineer" was not included in the unit. The Respondent's agents explained that the position of master die cutter was in the unit, but that that position had not been filled. Mr. Muzzicato responded that he was aware that due cutters in the former unit had been hired by the Respondent, but were not being treated as in the unit.

Summa testified he explained to the Charging Party agents:

> I said Art [Muzzicato] these are different positions. The primary purpose of this position the die engineer position is to go out and find new technology to make dies that the company believes that it cannot go forward using the technology that is hundreds of

> years old. They need to go to modern technology and that that was the primary function of these die engineers and that's why we didn't put them in the bargaining unit.
>
> * * * *
>
> I said that -- I pointed out that there was a die cutter job description and depending on where the evaluation of the technology came out that may be filled in the future. [Muzzicato] said -- I said look we're willing to bargain about this. We've got to negotiate a contract so we could -- we will talk about this issue of whether they are in or out, what their duties are and we will put it on the table with everything else. He then said well are you willing to take the old contract and rehire all of the employees. I said absolutely not we will go out of business. He said well then we really have nothing to talk about and I said well then we will have to let the N.L.R.B. decide and that really was the end of the meeting.

Mr. Muzzicato testified the meeting ended with the expectation they were to meet again and testified categorically that he never told the Respondent's agents in this meeting or any other time that the Union had nothing to discuss with them unless they assumed the former entity's contract. Muzzicato added that the Union's counsel had told the Union negotiators that it was unlikely the Respondent would be found an alter ego of the former entity unless the principal owners were the same and that when Muzzicato saw the sales agreement on March 22, 2000, he realized that the Respondent would not be found to be an alter ego of the former enterprise and therefore would also not be held to be bound to the old contract. Muzzicato did not concede this argument to the Respondent's agents at that time however.

The parties disagreed respecting subsequent events. Mr. Summa testified that he received nothing in writing and no phone communications from the Union seeking further bargaining. He testified that 3 or 4 times in the following period, every few months:

> Art [Muzzicato] and I would run into each other at various other clients and one of us would say something about when we're going to get together. The response I normally got was are you willing to sign the contract…. I would say of course not and that would be the end of it.

Mr. Muzzicato testified that while he did not request bargaining in writing or by phone, he did speak to Summa three or four times and asked him to meet with the Union and to bring Salamone to such a meeting. He reiterated that he did not tell Summa that the Respondent must adopt the former entity's contract and hire all its former employees, rather he just sought to bargain but was always told by Summa that he would have to get back to Muzzicato and never did so. The Union called Mark Liburdi, President of UAW Local 712, who testified that on at least two occasions in his presence during the period May to September 2000, during meetings on other business with Summa and Muzzicato. He specifically recalled that Muzzicato asked Summa about meeting with him regarding the Respondent. He recalled that Summa on each occasion told Muzzicato only that he would get back to him.

On October 6, 2000, Mr. Michael Petroraio was laid off and Mr. Richard Carey was transferred to the Position of Product Development Technician, a management position the job description of which is dated October 6, 2000. The Union was neither notified respecting nor offered an opportunity to bargain concerning the Respondent's decision to take these actions nor afforded an opportunity to bargain respecting the effects of these actions.

The Union's alter ego charge with the Board was withdrawn in August 2001 and the instant complaint issued that same month. A meeting was arranged and held on October 2, 2001, at the UAW regional headquarters between Muzzicato, See, Summa, Ryan

and Michael Salamone. Negotiations were stillborn when the parties could not agree on the recognition clause of any possible contract.

C. The Duties of Michael Petroraio and Richard Carey

Messrs. Michael Petroraio and Richard Carey had worked for the Waterbury Button Company for many years serving finally with that employer as the two Master Die Cutters in the bargaining unit. The Waterbury Button Company's job description for the Master Die Cutter position is as follows:

> Perform all required duties to make master hubs and working dies, for embossing designs on product. Requires an intensive knowledge of cutting dies and engraving using had tools, pantographs (2-D & 3D), line engravings machines, heat treating equipment, drop hammers and other equipment related to creation of dies. Ability to cut dies using CAD/CAM equipment, utilizing SmartCAM or similar type programming knowledge.
>
> Develop, alter, repair and maintain highly intricate embossing tools. Work from prints, models, specifications, sketches or oral instructions to law out work. Visualize finished jobs to make necessary calculations to determine metal flow and other variables. Maintain extremely close tolerances in order to cut (negative/positive) dies and hubs, or to make design changes. Instruct and set up master templates on engraving or other embossing equipments. Analyze damaged tools to recommend corrective actions. Maintain storage of master hubs.
>
> Detect and report defective materials, improper operation, and other unusual condition to proper supervision. Keep work area and equipment in a clear orderly condition. Keep machines properly lubricated. Follow prescribed OSHA and DEP regulations in addition to Company policy with regard to personal safety, the safety of others and the proper handling or regulated materials.

Waterbury Button Company also had a position of die cutter which, while similar, was not so skilled and did not involve the analytical skills or the operation of the CAD/CAM SmartCAM equipment required of master level die cutters.

The Respondent's President Michael Salome testified that in consolidating and reforming the job descriptions of Waterbury Button for the Respondent's operations, he prepared new job descriptions for the die cutter position and Die Engineering position. The Die Engineering position was labeled an "office/management job description" and three of the description's five paragraphs tracked closely the three paragraphs of the Waterbury Button Company's Master Die Cutter position, quoted above, with the addition of two extra paragraphs within the description:

> Seek out new methods through seminars, trade literature, internet, contacts in the industry, etc. that could be incorporated into the work-cell that either reduces costs, improves the quality or significantly reduces the lead time required to produce working tools from concept to completion. Work may require day trips to consult with vendors of equipment, supplied, or processes.
>
> Through journals, seminars, Internet, etc. keep abreast of new products and process that could be incorporated into the area that either lowers manufacturing costs,

improves the quality, or offers something new and/ or different that is beneficial to, or increases company revenue.

Both Petroraio and Carey were interviewed on January 30 and 31, 2000, for the Die Engineering position, by Salome who made it clear that the position was a management not bargaining unit position, but that wages would be generally the same as they had received under their former employment. The two were also to receive the same health insurance benefits, life insurance benefits, disability, and 401(k) plan that the production and maintenance and all other employees would receive.

There were some differences from their previous employment. While wages and overtime was essentially equivalent, as salaried employees they would be paid for missed days. They would receive an hour for lunch as opposed to the half hour lunch provided production employees. The two were also to be provided with internet access, telephone voice mail and a mail box to receive correspondence.

Mr. Petroraio testified to his work experience with Waterbury Button working with Mr. Carey and his subsequent experience with Carey at the same location under the Respondent. He testified that when he started with the Respondent he was told simply to resume working on the job he had been working on under Waterbury Button when he had been laid off. He was at the same work bench, under the same supervisor, Tom Wirges. Petroraio testified:

Q And can you describe working for OGS as a die engineer, what your duties would consist of in a typical day? What you would do.
A Well, they didn't change much from when it was Waterbury Button because they were looking to get the jobs out that they were late. We did the tool repair, made new forces, new dies, kept the machining centers running.
Q Did that change after you first started? Or...
A It changed a little bit but not much.
Q How did it change?
A We. Well, I spent a little bit of time on the internet looking into different processes as far as an EDM and different software packages.
Q What's an EDM?
A Electrical Discharge Machine. We use it to make forces.
Q And so, you said you performed some research on how on that process, on the EDM machine?
A Yes.
Q And you said you spent some time on the internet researching software packages?
A Yes.
Q What would they be for?
A For the machining centers you use to cut the dies.
Q Okay. Can you give me your best estimate of what percentage of your daily duties were spent, the time in a typical day, was spent doing internet research for these purposes?
A It would be about two percent.

Mr. Petroraio testified that as the Respondent's employee he continued to interact with production and maintenance employees. He also used the cafeteria for breaks and lunch until September 2000 when he and Carey were instructed by their supervisor not to spend time with the hourly employees: "We were management people and we shouldn't be doing that." He did talk with venders, attended a trade show and passed along sales representative reports, but

had done similar things when with Waterbury Button. He could inform his supervisor if equipment "looked good", but his recommendations based on the research he had undertaken had never been followed. In a characterization proposed by the counsel for the Respondent during his cross-examination, the Respondent's operation as compared to the former process under Waterbury Button did not seem to be much different in his work area.

Mr. Carey also testified respecting his duties and responsibilities as an employee of the Respondent. He described a position much more directed toward searching out technology and cooperating with other employees such as Graphic Artist/Programmer Heidi Gomez Kitchin. After his direct examination by counsel for the Respondent concluded, during the beginning of cross examination, Mr. Carey testified that he had left the Die Engineer position at the time Petroraio was laid off. That position was no longer staffed after October 6, 2000 and he had became the Product Development Technician, a management position heavily centered on new product and processing research and development on that date.

Carey testified that until Petroraio was laid off, Petroraio was the primary interface with management and supervision. It was only after Petroraio's layoff, Carey testified, that he worked more closely with supervision on developing new technology and determining subcontracting by vendor sourcing and budgeting.

D. Analysis and Conclusions

1. Credibility Determinations

The great bulk of the record is free of disputed testimonial evidence. Two areas however are important to the resolution of the allegations: the testimony of Petroraio and Carey respecting their work for the Respondent and the testimony of Muzzicato and Summa respecting their negotiations and conversations on behalf of their clients. These disputed areas are treated separately below.

a. The Board's Instructions and the Parties' Positions on Credibility Determinations

The Board in its Order Remanding Proceedings, page one of slip op. at fn. 3, provided:

> The new judge may rely on Judge Edelman's demeanor-based credibility determinations unless they are inconsistent with the weight of the evidence. If inconsistent with the weight of the evidence, the new judge may seek to resolve such conflicts by considering "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole." *RC Aluminum Industries, Inc*., 343 NLRB No. 103, slip op. at 1 fn. 2 (2004), quoting *Daikichi Sushi*, 335 NLRB 622, 623 (2001)(internal quotation marks and citations omitted). Alternatively, the new judge may, in his/her discretion, reconvene the hearing and recall witnesses for further testimony. In doing so, the new judge will have the authority to make his/her own demeanor-based credibility findings.

The General Counsel and the Respondent directed substantial portions of their filings with me to the proper treatment of Judge Edelman's credibility findings. The General Counsel argued that Judge Edelman's credibility determinations were his own, that the weight of evidence requires that the credibility resolutions remain undisturbed, that the passage of time makes the recall of witnesses impractical and their testimony unreliable and, finally, that the equities involved demand that the matter not be delayed by reconvening a hearing. The Respondent argues that the original decision herein was tainted as the Board found in its

remanding order and that the credibility resolutions in the original decision are unsustainable for that reason and further because they "strain credulity". Thus they should be disregarded.

To the extent the parties' arguments regarding the original decision's credibility resolutions seek to expand, contract or change the Board's specific instructions on remand, quoted in part above, they must fail. The Board's instructions to me are not suggestions they are commands. In that light, I have carefully considered the instructions of the Board to me to consider whether or not to rely on those original credibility resolutions which are not inconsistent with the weight of evidence. I have made such a case by case determination based on the record as a whole and did not simply consider all the credibility findings of Judge Edelman as an undivided whole and whether or not they should be automatically accepted or rejected as a totality.

As set forth in detail below, I have specifically followed the Board's quoted instructions in making individual credibility determinations herein. In each such determination, as is set further in specific instances below, I have considered the demeanor-based credibility determinations of Judge Edelman as reflected in his decision by considering the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. Despite my consideration of the various credibility resolutions were taken independently of one another, in no case have I found Judge Edelman's demeanor-based credibility determinations inconsistent with the weight of the evidence.

The Board's instructions further provided me with the discretion to reconvene the hearing and recall witnesses for further testimony to make my own demeanor-based credibility findings if I found it necessary and appropriate to do so. On this record, respecting Judge Edelman's demeanor-based credibility determinations, I find there is simply no need to do so. Rather, exercising the discretion granted me by the Board, I find it is appropriate to, and I shall, rely on each of Judge Edelman's demeanor-based credibility determinations as set forth in his decision.

The great bulk of the record is free of disputed testimonial evidence. Two areas however are important to the resolution of the allegations: the testimony of Messrs. Petroraio and Carey respecting their work for the Respondent and the testimony of Messrs. Muzzicato and Summa respecting their discussions and conversations on behalf of their clients. These important areas of dispute are treated separately below and the arguments of the parties have been considered and applied within the scope of the Board's instructions.

b. Muzzicato – Summa Credibility Determination

The testimony of Messrs. Muzzicato and Summa respecting their meetings and conversations is set forth in part above. It is highly relevant to the issues herein and at substantial variance. Each side advanced the version of events of its own witness and based its legal arguments largely upon its own witnesses' facts.

The Respondent notes that Judge Edelman initially rejected the Respondent's offer of evidence respecting certain bargaining and that he thereafter had a preconceived attitude that precluded a fair consideration of the conflicting evidence, ultimately crediting the farfetched and improbable testimony of Mr. Muzzicato over the more plausible testimony of Summa. The General Counsel urges that the credibility resolution at issue are demeanor based and were independently arrived at, free from the other matters which generated the remand.

Judge Edelman in his decision at 347 NLRB No. 29, JD slip op. at 8 (2006), found:

> At this point there are certain inconsistencies between Muzzicato's testimony and Summa's testimony. Based upon comparisons in demeanor, Muzzicato's contemporaneous notes, and consistent with the undisputed facts I find Muzzicato a more credible witness. Therefore, where there are inconsistencies in testimony, I credit Muzzicato.

Beyond the quoted summary of his credibility resolution of Muzzicato over Summa, Judge Edelman discussed various areas of factual conflict between the two, consistently finding Muzzicato's testimony the more credible and ultimately based his relevant findings thereon.

As noted supra, Judge Edelman's credibility resolutions were not rejected by the Board as such. Further the Board noted in its remand order: "We will not order a hearing de novo because our review of the record satisfies us that Judge Edelman conducted the hearing itself properly." I have considered the testimony of Messrs. Muzzicato and Summa in the light of the record as a whole and the arguments of the parties in applying the Board's instructions to this credibility resolution. Applying that standard here, I cannot find that Judge Edelman's credibility resolutions favoring Muzzicato over Summa is inconsistent with the weight of the evidence. In reaching this determination I have considered in the balance, as the Board instructs, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. Nor do I find it is necessary or desirable to reconvene the hearing to consider the testimony in disputed areas *de novo*.

Judge Edelman made detailed findings respecting the demeanor-based credibility resolution of the Muzzicato-Summa testimony, which I have found above are not inconsistent with the weight of the evidence. I find and conclude that it is appropriate to rely on them in resolving the issues herein. I therefore credit the testimony of Mr. Muzzicato over that of Mr. Summa where the two differ. The version of events of Mr. Muzzicato as set forth in part above is credited over the version of Mr. Summa also set forth in part above.

c. Petroraio – Carey Credibility Determination

Messrs. Petroraio and Carey were the only two die engineers for the Respondent at relevant times and gave important testimony respecting their duties and responsibilities. Their testimony respecting their job duties was at substantial variance although it was not altogether clear that Mr. Carey's testimony respecting what he did for the Respondent was directed to his period of service as a die engineer rather than in a subsequently held position.

Counsel for the Respondent contended at the hearing that Petroraio's testimony respecting his activities as an employee of the Respondent was not "100% truthful in terms of what he did or what he is saying he did versus what he actually did." Similarly in its position statement the Respondent challenged Judge Edelman's crediting in its entirety the testimony of Petroraio arguing: "in so doing he ignored inconsistencies in such testimony and positions that strained credulity." (The Respondent's Position Statement at fn. 1 page 2.). The Respondent rather favored the testimony of Carey and argues his credibility over Petroraio. The Charging Party and the General Counsel challenged that view and advanced the testimony of Petroraio over that of Carey.

Judge Edelman in his decision at 347 NLRB No. 29, JD slip op. at 3 (2006), found:

> Where there are any inconsistencies between Carey and Petroraio's testimony, I credit Petroraio. I was generally impressed with Petroraio's demeanor. His testimony was detailed, and consistent during both direct and cross examination.
>
> Carey, on the other hand, was at times vague and inconsistent. For example, although Carey initially testified on direct examination that he spent approximately 50% of his work time engaged in seeking out new technologies, it became clear upon cross examination that Carey's testimony related the time period after Petroraio was laid off and after Carey was inserted into the new position of "Product Development Technician"….

Beyond the quoted summary of his credibility resolution of Petroraio over Carey, Judge Edelman discussed the various areas of factual conflict between the two finding Mr. Petroraio's testimony the more credible and based his findings thereon.

Relying of the Board's instructions as quoted and discussed supra, and essentially for the same reasons as set forth supra, I find that Judge Edelman's findings respecting the demeanor-based credibility resolution of the Petroraio-Carey testimony are not inconsistent with the weight of the evidence and I rely on them. I therefore credit the testimony of Mr. Petroraio over that of Mr. Carey where the two differ. The version of events of Mr. Petroraio as set forth in part above is credited over the version of Mr. Carey also set forth in part above. The fact that Mr. Carey had had a job change which was not made clear during the trial before he was far into his testimony, so that it was difficult to ascertain with precision which job he had addressed in certain elements of his earlier testimony, was a relevant fact adding support to the findings made by Judge Edelman which I here adopt.

2. The Legal Arguments of the Parties

a. Basic Areas of Agreement

In order to focus on the issues dividing the parties, it is initially appropriate to set forth the general areas of agreement of the parties. The parties agree that the Respondent is a successor to the former Waterbury Button Company within the meaning of *Fall River Dying Corp. v. National Labor Relations Board,* 482 U.S. 27 (1987). The parties further agree that the Respondent on March 2, 2000, recognized the Union as the representative of a production and maintenance employee unit, but had made it clear to the Union by March 22, 2000, that the recognition of the Union as representative of the production and maintenance unit did not include recognition within that bargaining unit of its two employees in the position of die engineer, Michael Petroraio and Richard Carey, who had been employed in the former entities production and maintenance bargaining unit as master die cutters. Finally the parties agree that the Union asserted the position the two employees were by rights in the bargaining unit.

The parties agree that an employer who succeeds as the Respondent did herein to the operations of another employer is not bound to simply continue the operations of its predecessor, but may before it has incurred any bargaining obligation change its technology and redo the number and type of job positions it utilizes without hindrance under the Act. It follows that if a job position or positions, formerly within the predecessor employers bargaining unit, has been so changed that it is no longer appropriately part of such a bargaining unit, then there is no obligation on the part of the new or successor employer to include that position or positions within the new unit. Conversely, and again without apparent dispute between the parties, if a job position or positions, is carried forward unchanged, or changed but still appropriately within the appropriate collective-bargaining unit, the successor employee must

include its employees in those positions in the bargaining unit for which it has granted union recognition. Put more generally, the new employer may change terms and conditions of employment, but it does not have license simply to rely on its unsupported preferences or fictitious job content labeling, rather than actual job content, to withhold certain job positions from the recognized unit.

b. Basic Areas of Disagreement Between the Parties

Three basic areas of dispute divide the parties. The parties strongly disagree on the appropriate composition of the bargaining unit at the time of initial recognition. The Respondent contends that the unit did not properly include the position of die engineer nor the two individuals who occupied that position. The General Counsel and the Charging Party argue that that the die engineer position and the two individuals at issue were properly indeed necessarily in the successor bargaining unit when the predecessor ended its operations and should have been included in the successor's production and maintenance bargaining unit when the Respondent took over and resumed operations.

The parties equally dispute whether or not the Respondent had an obligation to bargain over the subcontracting out of die work, the elimination of the position of die engineer held by Petroraio and his layoff as well as the change in the job content of die engineer Carey. The Respondent argues initially, as noted supra, that the position and individuals were never properly within the bargaining unit and therefore the Respondent never had any obligation whatsoever to bargain respecting them. Further the Respondent argues that the subcontracting and the die engineer position's discontinuance as to Petroraio and job content change of Carey were inextricably part of a decision by the Respondent to utilize high technology subcontractors in its die making operation – a matter that lay at the core of its business enterprise. Thus, the Respondent argues under *First National Maintenance Corp. v. National Labor Relations Board*, 452 U.S. 666 (1983), it had no obligation to bargain respecting this change in all events. The General Counsel and the Charging Party simply reject the Respondent's *First National Maintenance* theory and argue the record facts do not support such a theory.

Finally, the parties are in dispute over the consequences of the Union's bargaining during the relevant period and the appropriate remedy which should be involved given all the relevant circumstances. Thus the Respondent argues the Union took an all or nothing position during bargaining which, in requiring the Respondent to adopt the former employer's collective-bargaining agreement as a predicate to any further negotiation, prevented any good faith bargaining on the matters at issue to occur. And the Respondent argues that the remedy sought by the government herein is inappropriate to any possible finding of a violation. The General Counsel and the Charging Party dispute these contentions on their facts.

3. Did the Respondent Have an Initial Obligation to Include the Die Engineer position and the two Die Engineer employees in the recognized Unit?

There is no question and I find that the unit placement of the die engineer position and the two die engineers involved: Messrs. Petroraio and Carey, is one of fact rather than law. A *Fall River* successor employer has no obligation to carry forward the unit structure of the predecessor employer and may rather, if not for impermissible reasons, add, subtract, rearrange or transmute its employment complement including the bargaining unit or units of the previous employer. Such a successor employer, however, remains subject to the normal Board statutory and decisional law respecting collective-bargaining unit inclusion and exclusion. No employer may simply by fiat include or exclude positions or individuals in a bargaining unit based on whim or wish independent of determinative facts relevant to such unit placement.

The Respondent's argument as to this aspect of the case has several particulars. First counsel challenges Judge Edelman's credibility findings in their entirety and urges I not rely on any of his findings.[7] The General Counsel disagrees particularly as to those findings favorable to the government's case. As noted supra, I have carefully considered the credibility findings of Judge Edelman consistent with the Boards instructions. Applying those instructions I found Judge Edelman's credibility resolutions as set forth above to be consistent with the weight of evidence and I find it appropriate to reply on them and do so throughout this decision. As to this aspect of the Respondent's arguments then, I reject it in its entirety.

The Respondent does not limit its factual argument to an attack on Judge Edelman's findings. Further counsel for the Respondent argues that Judge Edelman failed to consider certain factual elements relevant to the unit question. Thus, counsel argues, inter alia, that the Respondent made changes in the predecessor employer's system, including the integration of the operations of the die engineers with Graphic Designer Kitchin. Further the die engineer positions were classified "salaried exempt" as opposed to "hourly" as production and maintaintence unit employees were described and paid. Further the two employees had new reporting requirements, their own phone and voice mail, computers and Internet access. The Respondent argues these facts establish, contrary to Judge Edelman's findings, that the die engineers lacked a community of interest with the production and maintenance unit employees and should simply not be considered ever to have been part of the unit.

I have considered the arguments of counsel on behalf of the Respondent as to the unit issue without relying on the legal analysis of Judge Edelman. I do not find that the facts emphasized by the Respondent are sufficient to overcome the strong contrary facts presented. Further, given the specificity of Judge Edelman's crediting of Mr. Petroraio's detailed testimony over Carey as to what was done by the two at relevant times, I also do not find the evidence offered sufficiently credible to overcome the finding made by Judge Edelman in crediting Petroraio that, as to the die engineers, things under the Respondent were as they had been under the previous employer and that the argued changes advanced by the Respondent were paper or inchoate, putative, descriptions of matters never put into place or practice at relevant times. Accordingly, I reject the argument of the Respondent and find that at the time of the initial recognition, and all times subsequent, the appropriate collective-bargaining unit should have included, and did in fact include, the die engineer position and the two die engineers.[8]

4. Was the Respondent's obligation to include the die engineer position and die engineer employees in the recognized bargaining unit modified by subsequent events?

The Respondent argues that there was no doubt that the predecessor employer and its own operations initially involved subcontracting die engineer work and that the bulk of the dies used were made by outside vendors. As the Respondent's operations continued, alternatives were rejected as impractical and a decision was taken by management:

> [T]hat the best way to improve the die making turnaround time was to cease doing business with hand-made die vendors and form relationships with the best of the

[7] Judge Edelman's legal analysis was set aside by the Board in its remanding order and has not been considered or relied on herein.

[8] Counsel for the Respondent's apparent offer to bargain about including the individuals is immaterial inasmuch as a bargaining over the unit is a non-mandatory subject of bargaining which was clearly rejected by the Charging Party at relevant times.

> subcontractors who had already invested in and perfected the laser and EDM equipment. (Respondent Counsel, June 29, 2006, Summary at 4.)

Counsel for the Respondent argues this decision which includes changes in the extent of subcontracting, the layoff of die engineer Petroraio and the job change of Carey is in its totality exempt from a normal bargaining obligation. Thus counsel argues:

> Simply stated, OGS's decision to utilize high-tech subcontractors in its die-making operations concerned a matter that lay at the core of its business enterprise. The Company had a fundamental right to choose its course without first having to seek agreement from the Union, and it exercised that right, making a completely lawful decision to subcontract. See, *First Maintenance Corp. v. National Labor Relations Board,* 452 U.S. 666 [alternate citations omitted.](1981). (Respondent Counsel, June 29, 2006, Summary at 4.)

The General Counsel challenges the argument of the Respondent asserting that the subcontracting/lay off decision of the Respondent was a traditional matter and mandatory subject of bargaining. Counsel for the government argues the Respondent's claim of shelter under the *First Maintenance* doctrine is inapposite under *Torrington Industries*, 307 NLRB 809 (1992). The governments relies on Torrington's holding:

> We simply find that the Respondent has not shown that its decision to replace them through subcontracting was dictated by any core entrepreneurial reasons. No substantial commitment of capital or change in the scope of the business would be involved in negotiating with the Union over, for example, transferring the truck, but not the driver, or making a ready-mix truck available to Marshall and Blair. Thus, whether or not the Respondent's decision to replace them with nonunit personnel was motivated by labor costs in the strictest sense of that term, the fact remains that the decision clearly involved unit employees' terms of employment and it did not ``lie at the core of entrepreneurial control.'' (Stewart, J., concurring). [Fibreboard Corp. v. NLRB, 379 U.S. 203 (1964)] at 223.]

See also, *The Winchell Company,* 315 NLRB 526 (1994).

I agree with the General Counsel that the Respondent did not demonstrate on this record that its decisions involved in the subcontracting and associated discontinuance of the die engineering position, the lay off of Petroraio and the job change of Carey, were at "the core of entrepreneurial control" and hence beyond the reach of traditional bargaining.

The Respondent argues that at least some of its die work had always been subcontracted and a fundamental technological decision was taken to change the way such subcontracting work was done. While it is correct that the proportion of die subcontracting was changed. Simply put however, on the instant record, the Respondent simply failed to establish that these matters were at the core of entrepreneurial control as required by *Torrington.*

It follows therefore that the Respondent bore a normal bargaining obligation respecting the matters at issue herein.

5. Was the Respondent's obligation to bargain respecting the discontinuation of employment of die engineers, the layoff of Petroraio, and the transfer to a non-unit position of Carey altered by the Charging Party's bargaining conduct?

There is no doubt that the Charging Party sought to have the Respondent adopt the predecessor employer's contract. Beyond that fact the testimonial versions of Charging Party negotiator Art Muzzicato and Respondent negotiator Joseph Summa different sharply regarding their later communications. Judge Edelman made extensive credibility resolutions respecting the conflicting testimony in these regards. I have considered that testimony in light of the Board's instructions at some length as described supra and, on the same basis as set forth supra, have determined it is appropriate to accept the credibility resolutions of Judge Edelman.

That being so and in reliance on those credibility resolutions as discussed supra, I find that the Charging Party did not engage in any "take it or leave it" bargaining which would have reduced its rights and remedies under the Act in this matter. Rather I find that the Union sought on several occasions to bargain respecting the unit and the Respondent's agent consistently avoided doing so. In making these findings I credit Muzzicato over Summa.

6. Summary and Conclusion

I have found above that in early 2000 the Respondent was a successor employer to a production and maintenance collective-bargaining unit which properly included a die engineer position which was occupied by two individuals: Messrs: Mike Petroraio and Rich Carey. Further I have found that the Respondent recognized the Charging Party Union on or about February 2000, as the representative of its unit of production and maintaintence employees, but specifically withheld granting the Union recognition of the die engineer position or of Mike Petroraio and Rich Carey in those positions. I find that this refusal to include them in the unit was not accepted or agreed to by the Union.

I have further found that on or about October 6, 2000, without providing notice to or an opportunity to the Union to bargain about either the decision or its effects, the Respondent laid off die engineer Petroraio and changed the job title and job content of die engineer Carey.

I find that the Respondent by engaging in the conduct set forth above violated its duty to recognize and bargain with the Union respecting all members of the appropriate collective-bargaining unit and therefore violated Section 8(a)(1) and (5) of the Act. I therefore sustain the complaint allegations alleging such conduct.

Remedy

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist therefrom and post remedial Board notices. As is traditional in unilateral change violation cases, I shall order that the Respondent restore the status quo ante and provide the Union with notice and an opportunity to bargain respecting any future proposed changes and their effects. The Respondent's argument for special lesser remedies on this record is not persuasive.

I shall also require the Respondent to offer to restore Mr. Mike Petroraio to his former position as die engineer and make him whole for any loss of wages and benefits he may have suffered by virtue of his wrongful layoff, with interest. Back pay shall be computed in accordance with *F. W. Wool-worth Co.,* 90 NLRB 289 (1950) with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

Conclusions of Law

On the basis of the above findings of fact and the record as a whole and Section 10(c) of the Act, I make the following conclusions of law.

1. The Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party is, and has been at all relevant times, a labor organization within the meaning of Section 2(5) of the Act.

3. The Charging Party represents the Respondent's employees in the following collective-bargaining unit, which is appropriate for bargaining within the meaning of Section 9 of the Act:

> All production and maintenance employees at its Waterbury, Connecticut division, including die engineers, receiving, weighing and stock clerks, but excluding office and professional employees, guards, drafters, drafting, tool room and billing clerks, nurse, laboratory employees, expediters, timekeepers, supervisors, factory supervisors, and all other supervisors as defined in Section 2(11) of the National Labor Relations Act, as amended.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Charging Party with respect to the production and maintaintence bargaining unit:

a. by at all times material failing and refusing to recognize the unit as including the position of die engineer or of individuals Mike Petroraio and Rich Carey,

b. by subcontracting out all die work without providing notice to or an opportunity to the Union to bargain respecting the decision to discontinue all said work or the effects of said discontinuance,

c. by laying off die engineer Mike Petroraio without providing notice to or an opportunity to the Union to bargain respecting the decision to discontinue said position or the effects of said layoff,

d. by changing the job content and duties of die engineer Rich Carey without providing notice to or an opportunity to the Union to bargain respecting the decision or its effects.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

Based upon the above findings of fact and conclusions of law, and on the basis of the entire record herein, I issue the following recommended Order.[9]

The Respondent, OGS Technologies, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to recognize the Charging Party Union as the representative of its production and maintaintence employees specifically including within the recognized bargaining unit the die engineer position and individuals Mike Petroraio and Rich Carey in those positions.

(b) On or about October 6, 2000, without providing notice to or an opportunity to the Union to bargain about either the decision or its effects: 1) subcontracting all manufacturer of dies, 2) laying off die engineer Petroraio and 3) changing the job title and job content of die engineer Carrey.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Recognize the Charging Party Union, as the representative of its production and maintaintence employees specifically including recognition of the die engineer position and of Mike Petroraio and Rich Carey in that position.

(b) Within 14 days from the date of this Order, offer to Michael Petroraio his former position of employment, or if no such position exists, to a substantially equivalent position of employment, without prejudice to his seniority, or other rights and privileges he previously enjoyed, and make him whole in the manner set forth in the Remedy portion of this Decision described above from the date of his layoff, until the date of a valid offer of reinstatement.

(c) Restore the job duties of former die engineer Rich Carey

(e) Restore the status quo ante respecting the handling of dies as part of the Respondent’s manufacturing processes

(f) Preserve and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records, including an electronic copy of such records if stored in electronic form, necessary to determine if the terms of this Order have been complied with.

[9] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

(g) Within 14 days after service by Region 34, post copies of the attached Notice at its Waterbury, Connecticut facility set forth in the Appendix[10]. Copies of the notice, on forms provided by the Regional Director for Region 34, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted in each of the facilities where unit employees are employed. Reasonable steps shall be taken by the Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility at any time after January 2000.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: August 23, 2006.

_____
Clifford H. Anderson
Administrative Law Judge

[10] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

FEDERAL LAW GIVES EMPLOYEES THE RIGHT TO

Form, join or assist a union
Chose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Chose not to engage in any of these protected activities

After a trial at which we appeared and presented evidence, the National Labor Relations Board found that we have violated the terms of the National Labor Relations Act. They have ordered us to post this notice and to comply with its terms.

Accordingly,

We give our employees the following assurances.

WE WILL NOT refuse to bargain with the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Local 376, AFL-CIO (the Union) respecting our production and maintenance employees including the employees in the position of die engineer.

WE WILL NOT refuse to bargain with the Union before we subcontract unit work, lay off unit employees or eliminate unit jobs.

WE WILL NOT in any like or related manner violate the National Labor Relations Act.

WE WILL restore the job classification of Die Engineer.

WE WILL return Michael Petroraio to his former job of die engineer and pay him for any lost wages or benefits plus interest.

WE WILL restore the die engineer position of Richard Carey.

OGS TECHNOLOGIES, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

280 Trumbull Street, 21st Floor
Hartford, Connecticut 06103-3503
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.

THIS NOTICE AND THE DECISION IN THIS MATTER ARE PUBLIC DOCUMENTS

Any interested individual who wishes to request a copy of this Notice or a complete copy of the Decision of which this Notice is a part may do so by contacting the Board's Offices at the address and telephone number appearing immediately above.